

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

REGIS INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	1:06-cv-125-MEF
	)	
P&C GROCERS, INC., a corporation;	)	
CHARLES PARKER, an agent of same; and	)	
CECELIA GIBBS, an individual;	)	
	)	
Defendants.	)	

**MOTION FOR LEAVE TO SUPPLEMENT**

Plaintiff Regis Insurance Company (“Regis”) files this Motion for Leave seeking the Court’s permission to supplement the September 8, 2006, Reply in support of Regis’s pending Motion for Summary Judgment. In support, Regis submits the following:

1. This action seeks a declaration that Regis owes neither a defense nor an indemnification to P&C Grocers, Inc., or Charles Parker (collectively, “Defendants”) for claims asserted against them in a suit filed by Cecelia Gibbs (“Gibbs”) alleging that she was the victim of sexual harassment and religious discrimination while in P&C Grocers, Inc.’s employ. See Cecelia Gibbs v. P&C Grocers, Inc. et al, 1:05-cv-00912-MHT-SRW (M.D. Ala.)(the “Gibbs suit”). The conduct for which Gibbs seeks

to hold Defendants liable, however, is intentional and cannot constitute an “occurrence” under the governing insurance policy. See Doc. # 17, Exhibit 3. Further, numerous coverage exclusions preclude any determination that coverage should attach. Regis, therefore, owes no coverage. See id.

2. Regis filed its Motion for Summary Judgment on August 7, 2006. See Doc. # 13. Defendants filed their Response on August 29, 2006. See Doc. # 17. Regis filed its Reply on September 8, 2006. See Doc. # 19.

3. Defendants also filed their own Motion for Summary Judgment on August 29, 2006, to which Regis filed a Response on September 8, 2006. See Doc. # 19. Defendants did not file a Reply.

4. Pursuant to the Scheduling Order, the deadline for dispositive motions expired on October 24, 2006. See Doc. # 12, § 2. Defendant Cecelia Gibbs did not file a Motion for Summary Judgment and did not oppose Regis’s Motion for Summary Judgment.

5. The undersigned recently learned that the Gibbs suit has been set for trial on January 8, 2007, before the Honorable Myron H. Thompson. Further, Defendants’ Motion to Continue the trial setting in the Gibbs suit was denied on October 12, 2006. Accordingly, from all indications, the Gibbs’ suit will soon proceed to trial.

6. Further, the deadline for the parties to amend or add parties in the Gibbs suit expired on April 28, 2006, and the pleadings are closed. See Doc. # 17, Exhibit 1, p. 2, § 4. Thus, the likelihood of claims being added to the Gibbs suit that potentially could fall within Regis's coverage or would not otherwise be excluded is slim to nonexistent.

7. As previously disclosed to the Court, Regis is currently providing Defendants with a defense under a reservation of rights in the Gibbs suit. See Doc. 19, Exhibit 1-A. Defendants, therefore, have been aware from the start of that litigation that the defense Regis is providing may end and that Regis may owe no indemnity.

8. As currently postured, however, Regis will be required to pay Defendants' trial preparation and trial costs in the Gibbs suit. Such a situation is inequitable because (a) coverage is clearly not owed or is otherwise excluded and (b) ***Defendants do not dispute that fact.*** See Doc. # 17.

9. Regis would be extremely prejudiced by a delay in ruling on the coverage issues presented in this action. For example, Defendants fail to argue that Regis owes a duty to defend. See id. The lack of a definitive ruling on this issue (a) equates to a *de facto* finding that such a duty is owed and (b) will only result in Regis incurring costs that it does not owe as a matter of fact and law.

WHEREFORE, PREMISES CONSIDERED, Regis respectfully requests leave from the Court to file the attached Supplement to the September 8, 2006, Reply in support of Regis's Motion for Summary Judgment. See Exhibit 1.

*s/ Brennan C. Ohme*  
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**CERTIFICATE OF SERVICE**

I certify that on NOVEMBER 13, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing and/or that a copy of the foregoing has been served by United States Mail, properly addressed and postage pre-paid, to the following:

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